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996824—52——1

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 639

ARCHER ZAMLOCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 2168–2179) is reported at 193 F. 2d 889.

JURISDICTION

The judgment of the Court of Appeals was entered on January 14, 1952 (R. 2180). A petition for rehearing was denied on February 7, 1952 (R. 2181). The petition for a writ of certiorari was filed on March 8, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether on a trial for conspiracy to bribe a witness, to suborn perjury, and to obstruct justice, by inducing a witness to refrain from disclosing, at her trial or thereafter, the source of her access to certain narcotics, it was error to permit testimony of a conversation between two co-conspirators some time after that trial, with respect to the possibility of his making full disclosure, in the course of which there was discussion of petitioner's activities in the conspiracy.

2. Whether it was error to admit evidence of notes and mortgages in the aggregate sum of $25,000 given to a member and an associate of petitioner's law firm by one of the conspirators as showing a motive for petitioner's participation in the conspiracy.

STATUTES AND RULE INVOLVED

18 U. S. C. 209:

> Whoever, directly or indirectly, gives or offers any money or thing of value, or any promise or agreement therefor, or any other bribe to any person being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

18 U. S. C. 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * *

18 U. S. C. 1503:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States * * * or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U. S. C. 1622:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner, who had acted as attorney at law for one Marie Basom, was charged in a two-count

indictment returned in the United States District Court for the Northern District of California with (1) conspiring with others, including Steffen and Benevedes, to suborn perjury, obstruct justice, and bribe Marie Basom to give false testimony in a narcotics case, and (2) the substantive offense of bribery (R. 4–11). Steffen and Benevedes pleaded guilty to the charge of conspiracy and received sentences of four and three years' imprisonment, respectively (R. 106–108). They did not testify for the Government. Marie Basom and one Hugh Basom were named as co-conspirators but not as co-defendants. Both became government witnesses. Petitioner was convicted by a jury and sentenced to imprisonment for a term of three years on the first count and two years on the second count, the sentences to run concurrently (R. 93–94).

The first count of the indictment alleged that Marie Basom had been tried and convicted for a violation of 21 U. S. C. 174 by reason of her concealment of narcotics on April 15, 1949; and that in the course of the trial she had falsely testified that she had received the key to a locker box in a railroad station containing the narcotics from a person other than Hugh Basom, whereas she had actually received the key from Basom (R. 4–6). The count charged that the named conspirators, with other persons unknown, conspired and "continued so to conspire" until the date of the indictment:

(a) to violate 18 U. S. C. 1622 by soliciting, procuring and causing Marie Basom to give the false testimony as to the source of the key to the locker box (R. 6);

(b) to violate 18 U. S. C. 1503 "by corruptly endeavoring to influence and impede" Marie Basom from testifying to the true source of the locker key "and from further testifying in the said case * * * well knowing that said Marie Basom had appeared and was appearing in said case as a witness" (R. 6–7);

(c) to further violate 18 U. S. C. 1503 in that the conspirators knew that the Government, after the conviction in Marie Basom's case, "continue[d] to investigate and attempt to prosecute the offenses involved in said case" and the conspirators endeavored "to corruptly influence, obstruct and impede the due administration of justice by corruptly and by threat and by force concealing the fact and suppressing the knowledge that [Steffen and Benevedes] were in truth and in fact principals with the said Marie Basom" (R. 7–8); and

(d) to violate 18 U. S. C. 209 "by directly and indirectly giving and offering to give money" to Marie Basom, "being and having been a witness in the said case * * * with the agreement and understanding that her testimony be influenced * * * and for the purpose that she not disclose or reveal or testify" that Hugh

Bamm, Steffen, and Benavedes "were principals in the said case" (R. 9).

The count further charged, as overt acts "during the existence of said conspiracy and in furtherance and in pursuance thereof and to effect the objects thereof," various conversations between members of the conspiracy, prior to and after Marie Bamm's testimony in court, petitioner's holding of $2,000 for Marie Bamm in his safe deposit box between November 15, 1969, and March 20, 1970, petitioner's purchase and mailing of a cashier's check for the $2,000 in the name of "Marie Hamm," and a further conversation of Benavedes with Hugh Bamm on April 25, 1970 (R. 9-10).[1]

The evidence may be summarized as follows:

Hugh Bamm, a merchant seaman, testified that Steffen and Benavedes, on April 15, 1969, asked him to obtain a package from a locker in the railroad station. Bamm and his common-law wife, Marie, decided that, because of the sur-

[1] The second count charged the substantive offense of bribery "on or about June 25, 1969" by Steffen, Benavedes, and petitioner in that they "did directly and indirectly offer to give and did give money and a promise and an agreement therefor to said Marie Bamm being and about to be a witness in said case" upon an agreement "that her testimony was to be and should be influenced thereby in a material respect with the said and for the purpose that [she] as a witness in said case, not disclose or reveal or testify" that Hugh Bamm, Steffen, and Benavedes were principals in the case (R. 10-11).

picious circumstances and the possibility of "trouble," Marie should pick up the package. Upon doing so she was arrested by United States narcotics agents (R. 670-677, 688, 691-693, 861-869). Thereupon, all arrangements for bail and for petitioner's services as Marie's attorney were made by Benevedes, neither Simon nor Marie paying any fees[1] (R. 680-682, 716-717, 856-859).

The day following the arrest, Benevedes warned Simon that he and Marie were to keep their mouths shut or they would be murdered, as there were "big people" involved, running Steffen. Simon told Marie of the threat, whereupon she said that they would have to stick to the story which she had told the officers, i. e., that the locker key had been given her by a mythical "Carl" she had known at a former place of employment (R. 858-859). A further warning against disclosure was given by Benevedes to Simon shortly thereafter (R. 859-860).

Both Simon and Marie testified that petitioner told them, separately, before Marie's trial, that Benevedes had told him that Simon, and not the imaginary "Carl," had sent Marie to the

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[1] Petitioner first denied any recollection as to who handed him the money:

"Q. Is it your testimony under oath that you don't remember who handed you that money?

"A. Absolutely it is, Mr. Harold" (R. 1005).

He later admitted that it was Benevedes who paid him the $5,000 fee for representing Marie (R. 1746).

locker. Petitioner told Marie that they would continue with the "Carl" story. When Basom suggested telling the truth to the authorities, petitioner warned Basom that he and Marie would be murdered (R. 685–686, 866–868).

Marie testified to statements of petitioner indicating contacts with both Steffen and Benevedes (R. 693, 713–714). At her trial, on June 20–22, 1949, petitioner led her through extensive testimony of details of the purported acquaintance and transaction with "Carl" (R. 688–692). Immediately after the return of the verdict, petitioner remarked to her that the authorities obviously wanted her "to name Mr. S." (R. 693). On June 30, petitioner visited Marie at the jail and asked her whether she was going to name Mr. S. or not. She informed petitioner she wanted to see the prosecuting attorney who had stated at the trial that some leniency would be suggested if the real facts were disclosed. Petitioner said he would see him for Marie. On the next visit, he summarized a purported visit to the prosecutor as having been of no avail—"there would not be any use to tell the truth at that late date" (R. 694–697).[3] After sentence was

[3] Petitioner admitted that he had been told by the government authorities earlier in that month, on July 8, even before the statements in court on the day of sentencing, that if Marie would disclose the people behind her they would recommend leniency. He testified that he had informed Marie of this (R. 1275–1276).

pronounced, Marie heard around the jail that application could be made within 60 days for modification of sentence. On July 25, 1949, the day before her transfer to the West Virginia reformatory, she sent for petitioner and asked that he apply to the judge for such modification. Petitioner agreed to do so, and then told her that he had $4,000 for her, that "they had given him $4,000 for [her] conviction," that Benevedes had suggested that it not be left with Basom, and that he (petitioner) would hold it for her for 10% (R. 694, 700–704, 711–716, 741). On August 15, petitioner wrote to Marie at the reformatory, in reply to further inquiry by her, that "our efforts to secure a modification of your sentence met with failure" (R. 708–709, 738; Pl. Ex. 27).

Meanwhile, according to Basom, Steffen and Benevedes assured him, the day after the verdict in Marie's case, that by reason of influence, Marie would get probation or never even come up for sentence (R. 869–871). The next day, petitioner asked Basom for $300 for records to be furnished the probation officer (R. 872–873). In August, after Marie was sentenced, Basom told petitioner that Benevedes had informed him that petitioner was holding $4,000 for Marie. When petitioner admitted that fact, Basom asked why Marie had not wanted the money left with him, or in escrow. Petitioner replied that sea-

faring was a hazardous occupation and that an escrow would cause the federal authorities to investigate, in which case "Marie will lose the money and you [Basom] will go to jail" (R. 881–882).

In November, upon return from another voyage, Basom again saw petitioner at his office, pursuant to a letter from Marie asking for a receipt for the money (R. 884, 889). Petitioner took Basom to the bank, obtained his safe-deposit box and showed Basom an envelope with the name "Marie Basom" on it, containing $3,600 in $100 bills (R. 891–892). He gave Basom a receipt and again warned Basom of murder in the event that Basom should go to the authorities (R. 893, 897). On January 29, 1950, Marie wrote to Basom telling him there was no hope of parole. Basom then went to Benevedes and threatened to kill everyone concerned in the case if Marie had to serve the full three years. He exhibited his gun. Benevedes agreed to get hold of Steffen (R. 904–905, 912). On March 28 Basom went to petitioner to get the money. They went to the bank, petitioner showed Basom a cashier's check payable to Marie Hames, and obtained the return of the receipt he had given in November (R. 896–898, 909–911).

Petitioner testified that, prior to the verdict against Marie, he had had no knowledge from any source that Basom had sent Marie to the

locker on April 15, 1949, but he admitted that, immediately thereafter, she told him that such was the fact. He testified that Marie told him she did not know with whom Basom was working (R. 1288). Petitioner admitted that he agreed to hold the money for Marie, but said that Marie had asked him to obtain for her $4,500 which she had with Benevédes, and that he had dedueted $900 as the balance due on his fee (R. 1286–1287, 1289–1292).[4] Petitioner said that, when he asked Marie where she got the money "and what it was for," she declined to answer (R. 1290). He admitted that, on November 15, 1949, after earlier suspicions of his own, Basom had told him that Steffen and Benevedes had furnished the money to pay Marie for her time in jail "taking [Basom's] rap" (R. 1591–1596). Nevertheless, he thereafter mailed the check to Marie.

In addition to the foregoing and much other evidence,[5] three items of evidence were offered and admitted which, together with rulings thereon, form the basis for the petition for certiorari.

1. One item concerned a conversation between Basom and Benevedes immediately preceding

[4] An attorney Werlhof testified to another version by petitioner. Petitioner had told him that he charged Marie $900 for collecting $4,500 of an original amount of $7,500 for Marie, and that Marie had told him to contact Steffen for the money (R. 564–565).

[5] The printed record consists of 2164 pages, exclusive of the opinion below.

Basom's conversation with petitioner in August 1949 in which petitioner had admitted holding $4,000 for Marie, *supra,* pp. 9–10. Basom testified that he had returned from sea and found a letter awaiting him at his apartment.

> A. The reason I went to Benevedes was because Marie had said they were rotten, they were; no good. I thought maybe they had threatened her or something. That is the reason I went over there. I was very angry when I went into Benevedes' apartment.
>
> Q. What did you say?
>
> A. I said I received a letter from Marie that said you were no good.
>
> Q. Did you use any profanity, Mr. Basom?
>
> A. No, I did not. Benevedes jumped up and said, "Now, you sit down. I've got something to tell you."
>
> He said, "Did you know that girl wanted to call the prosecuting attorney, wanted to turn the whole bunch of us in?"
>
> I said, "No, I did not."
>
> He said, "Well, she did. Zamloch [petitioner] came to me and told me, or called me—I don't know which it was—that she wanted to go to the authorities, and I immediately got hold of Steffen. We went to Steffen's office and made an agreement with Zamloch to pay him $500 to go down there and tell her to keep her mouth shut." He said, Marie went down—or Zamloch

went down and Marie agreed to keep quiet for $4,000.

And he said, "You have a letter waiting over in Mr. Zamloch's office explaining the whole deal from Marie" [R. 878–879.].

This evidence was objected to by petitioner as a narrative of past events after "all of these things had been done." The judge ruled that the evidence was admissible since it was charged that the conspiracy continued down to the date of the indictment (R. 877–878).

2. Other evidence related to a conversation between Benevedes and Basom on April 25, 1950. This occurred after Basom had told the entire story to the District Supervisor of the Bureau of Narcotics, and arrangements had been made for Basom to have Benevedes come to Basom's apartment where a recording device could pick up his statements (R. 902–903). On the night of April 24, 1950 (see R. 533), pursuant to the supervisor's instructions, Basom phoned Benevedes to come to the apartment next day because of something very important (R. 913–914).

The recorded conversation of Benevedes with Basom on April 25, 1950 (R. 1115–1142) may be summarized as follows: Basom informed Benevedes that Marie had learned of a means of obtaining parole for $5,000 (R. 1115–1116, 1128–1129). If the money were not furnished she would "spill everything she knows about both of us." Benevedes felt hopeless about any prospect

of obtaining money himself (R. 1116). Basom suggested meeting with Steffen. Benevedes claimed he had not seen Steffen in seven months. He then alternated, during the course of a long conversation, between discussion of the effect of doing nothing more (R. 1116, 1119, 1131, 1133), and the alternative of having Steffen put up additional money or seeing petitioner about it (R. 1127, 1140).

As to the first alternative, he suggested that Basom warn Marie that it would now be merely her word against that of the others (R. 1119). He also suggested that by a disclosure now Marie would lose the bribe money, apparently not aware that petitioner had already taken $400 of the money and sent the rest to Marie (R. 1120). He further expressed the opinion, or possible threat for Basom's benefit,[6] that if Marie turned informer, she would not last a week, dwelling at length on Steffen's possible arrangement for the murder of another informer (R. 1131–1132).

Apparently in exploration of the advisability of going to Steffen to meet the additional demand, Benevedes mentioned that Steffen's whereabouts might be learned from petitioner (R. 1140). He reviewed at great length Steffen's reluctance to furnish money for the earlier bribe (R. 1117). In this connection, he mentioned past events in the case; that after conviction and before sen-

[6] Basom had protested that he was not trying a shakedown (R. 1115).

tence petitioner asked him for light on the case and that he had told petitioner "what happened," that he did not tell "too much, yet I told him enough" (R. 1117); that petitioner first asked Benevedes to convey to Steffens a purported original bribe demand by Marie for $7,500 (R. 1119, 1121–1123); that Steffen urged negotiation for a lower figure (R. 1123); that he (Benevedes) took Steffen over to petitioner (R. 1126); that petitioner and Steffen estimated that Marie would serve two years (R. 1137); that petitioner said that Marie could "put no finger on [him]" but Steffen told him he would not want Basom or Benevedes to get in trouble as Basom would not "go for it" (R. 1118); that Steffen gave petitioner the $4,000 and $500 "for [petitioner's] end, to take care of this money," petitioner having set the $500 amount (R. 1127, 1135, 1137, 1140); that Steffen had paid petitioner $2,000 to defend Marie on the narcotics charges; and that petitioner wanted another $1,000 if he won (R. 1138–1139, 1141).

Petitioner objected to the evidence on the ground that, with the sending of the money to Marie his connection, if any, with the conspiracy had ended,[7] but the court admitted the evidence (R. 1111) as throwing light on a conspiracy "in existence and continuing" and "[n]ot a narrative

[7] The check was sent to Marie 27 days before, on March 29, 1950 (R. 709).

of past events of a transaction that has closed and couldn't be any longer the object of a conspiracy" (R. 1108). The judge later instructed the jury as follows (R. 2104–2105):

> * * * Statements by co-conspirators are not allowable unless and until a jury finds that there was a conspiracy, and the parties who made the statements and the parties charged in the trial were in that conspiracy. In other words, if it is charged that A, B, and C entered into a conspiracy and did certain things in violation of the law, if A just comes out and says B and C were in it, that is not allowable and that is not evidence, until the jury is convinced by other evidence that A, B and C were in the conspiracy and had agreed to do these unlawful acts, and if the jury reaches such a conclusion that A, B and C have entered into that conspiracy and were conspiring and confederating together and acting together to violate the law, then the statements made by A to B and C, or to either of the others, those declarations of what is known as the co-conspirator during the existence of the conspiracy, are good and valuable evidence against all of the conspirators that the jury has found were members of that conspiracy.
>
> * * * if the jury concludes that [petitioner] and Hugh Basom and Benevedes and any others had entered into a conspiracy and that Benevedes and [petitioner], at that time, were still in that

> conspiracy and still agreeing and violating the laws of the United States, then those statements that Benevedes made are evidence against himself and against [petitioner], and are to be considered by this Jury—if you believe them.

3. The other evidence related to notes secured by mortgage, amounting in the aggregate to $25,000, given by Steffen on May 19, 1950, after Steffen was arrested, to MacInnis, one of petitioner's law partners, and Siegel, an associate of the firm, to secure fees for representing Steffen. This evidence was admitted upon the contention of the Government that it would disclose petitioner's motive in assuming the grave risks of the conspiracy to shield Steffen (R. 1537). The evidence was at first excluded by the judge as not adequately connected up with petitioner (R. 1148, 1355). In the course of petitioner's cross-examination, however, he testified that fees in criminal cases, except certain special cases which were deemed Mr. Hallinan's, were divided among MacInnis, Hallinan and petitioner himself (R. 1340–1341, 1405–1409, 1466–1468).[8] He testified that, after the arrest of Steffen and Benevedes, they came to his office but he refused to discuss the case with them (R. 1344–1346,

[8] Petitioner testified that the partnership was dissolved in April 1950 (R. 1341–1343), but admitted that a number of cases had been filed in the firm name thereafter (R. 1483–1515).

1354), and that, later, MacInnis told him that he, MacInnis, "had tentatively agreed to represent Mr. Steffen" (R. 1347). MacInnis, on the other hand, testified that there had been no tentative agreement, that he had only casually spoken to Steffen that day (R. 1937–1939). Petitioner also testified that Mr. Siegel was an associate of the firm experienced in tax matters who was paid a monthly fee, in addition to being given office space, to handle cases turned over to him (R. 1356–1360, 1661). Petitioner testified that MacInnis told him the first knowledge he had of the $15,000 mortgage was when he assigned it to another attorney who subsequently represented Steffen (R. 1376–1379). Petitioner also testified that Siegel told him that Steffen retained Siegel to take care of possible income tax evasion charges (R. 1667–1672). This mortgage was also assigned to Steffen's subsequent attorney (R. 1681). Bills for notarial fees on the mortgages were paid by the firm (R. 1507, 1672–1676). Thereafter, the judge admitted the evidence (R. 1639–1640, 1684–1685). He charged the jury as follows (R. 2109–2110):

> You have heard the testimony of the making of the mortgages, as to the manner in which they were acknowledged without the acknowledgors being present, as to the routine of the office, as to the notarial bill and charges against the law firm, as to how these things were paid for and the manner

of recording, and the making of the notes or not making of the notes. Mr. MacInnis says he assigned a note to another lawyer. Mr. Siegel said he had no recollection of ever drawing any note. He just drew the mortgages for $10,000 and $15,000 hurriedly and sent them off to be recorded. Those are collateral matters. They may help you or they may not help you in determining the truth of the charges against Archer Zamloch, because if there was a conspiracy and he had entered into that conspiracy, it was continuing and in existence at the time that the mortgages were given, and whether there were parties other than Benevedes and Steffen and Hugh Basom and Marie Basom, whether some of these other parties, whom you have seen or heard, were some of these parties unknown to the Grand Jurors, may be considered by you, and if you find that there were other parties, and it helps you to establish that there was a conspiracy to violate the law, and that Zamloch knowingly and intentionally was a part of that conspiracy and acts and transactions were carried on by parties in connection therewith and as a result of that conspiracy, then those may throw some light and help you in determining his guilt or his innocence.

ARGUMENT

1. Petitioner argues that the decision below is in conflict with *Krulewitch* v. *United States,* 336 U. S. 440, in upholding the admission of testi-

mony relating to conversations between Benevedes and Basom, in August 1949 and April 1950 (see Statement, *supra,* pp. 11–17), after Marie's conviction. In the *Krulewitch* case, however, this Court found no conspiracy to conceal a crime after the earlier crime had been concluded. This Court refused to infer such a conspiracy from the fact that there had been a conspiracy to commit a crime—a trip to Florida for purposes of prostitution—which had been completed long before (336 U. S. at 444). Here, the indictment charged, and ample foundation evidence was adduced, apart from the specified evidence, to show, that petitioner was a co-conspirator in a long course of inducements, bribery, and threats to prevent disclosure of the principals in a narcotics transaction, not only at the outset, by means of perjury in the trial of Marie Basom, but by active steps by one or the other of the conspirators thereafter, down to the date of the indictment, whenever Marie or Hugh Basom showed signs of disclosing the perjury and thus revealing the names of the other conspirators. There was no simple, limited objective of inducing Marie to give false testimony at her trial, only to allow her to disclose the truth afterwards in order to gain parole. The conversations of Benevedes to placate Basom, in August 1949 and April 1950, were clearly in furtherance of this conspiracy. Cf. *United States* v. *Perlstein,* 126 F. 2d 789, 798 (C. A. 3), certiorari denied, 316 U. S. 678.

a. There was ample evidence, independent of Benevedes' statements, to establish petitioner's participation in a continuing conspiracy which continued long after Marie's trial.

Marie Basom was not testifying as to hearsay when she testified that petitioner had admitted knowledge directly to her that Basom had been the one who sent her for the narcotics, and that petitioner told her, himself, that they "would still stick to the same story" that had been falsely told the narcotics agents (*supra,* p. 8). Marie testified to disclosures, by petitioner direct to her, that he had had contacts with both Steffen and Benevedes (*supra,* p. 8) and she testified that it was petitioner who told her, after the sentence, that there would be no use in now disclosing the truth (*supra,* p. 8). And it was petitioner's statement to which Marie testified, made by petitioner just before she was transferred from San Francisco, that "they" had given him $4,000 for her conviction (*supra,* p. 9).

Similarly, petitioner's threats of murder, to which Basom testified, were not relayed to him by Benevedes. They were made to him direct by petitioner, before the trial, on May 13, 1949 (*supra,* p. 8), and after the trial, in November (*supra,* p. 10). And in between, in August, it was petitioner who also told Basom direct that any public escrow of the bribe money would alert the federal authorities, lose the

money for Marie, and send Basom to jail (*supra*, p. 10). Obviously, petitioner knew that Basom would relay these threats to Marie, both before the trial and in Basom's later visits to her at the prison.

Petitioner's own admissions establish both his participation and the continuing character of the conspiracy. While he claimed innocence in the first stages of the conspiracy, he himself admitted that at least as early as July 15, 1949, the date of the sentencing of Marie Basom, he had known that Marie had committed perjury as to the source of the locker key (*supra*, pp. 10–11); and that he nevertheless (even according to his own version) obtained $4,500 for her from Benevedes and took the affirmative step of putting the money in his own safe deposit box instead of putting it in her bank account, of which he knew, or at least in a bank trust account of his own (*supra*, p. 11). He further admitted that, on November 15, 1949, Basom told him "that there was someone pretty big behind the case, and * * * that the name of the man behind the case was Steffen. * * * [T]hat that is where the money came from. * * *" (R. 1431), that "Benevedes was involved * * *" (R. 1594), that the money "was to pay for the time that [Marie] had to spend in jail for taking [Basom's] rap" (R. 1596) and he admitted that he then realized that Steffen "must have been the one to whom [the prosecuting attorney] had referred," both in his argu-

ment and on the date of sentence, when he "said Marie was shielding the big shot" (R. 1593–1594). Knowing all this, petitioner nevertheless retained $400 of the $4,000 for himself, and took the further step of sending Marie $3,600 in March 1950. Petitioner held the bribe money in his safe deposit box, long after Marie gave the perjured testimony, until she and Basom became so restive about the money that she seemed more likely to name the principals on that account than if the money were delivered.[9]

b. In the light of all this independent evidence, it is clear that Basom's conversations with Benevedes were in furtherance of the conspiracy. When Basom came to Benevedes in distrust and anger in August 1949, and with warning of new restiveness by Marie in April 1950, Benevedes did not sit down and review past events with Basom in gentle reminiscence of past felicities. It is not a matter, as alleged by petitioner, of culling from the conversation a few phrases in furtherance of the conspiracy, but rather of noting the entire nature and purpose of the talks. Bene-

[9] The jury could have found petitioner guilty on the basis of his own evidence alone. In such a case this Court held, even before enactment of the harmless error statute, that possible defects in some of the other evidence would not avail petitioner. See *Motes* v. *United States*, 178 U. S. 458, 475–476, in which this Court, due to wrongful admission of a statement, reversed a judgment as to all parties to a conspiracy but affirmed as to the one party whose own testimony was sufficient to establish his guilt.

vedes needed to quiet the man who burst in upon him in anger in the first interview (*supra*, p. 12) and who had threatened to kill him a short time before the second interview if more were not done for Marie. Benevedes was acting in behalf of all the others for the continued shielding of all. Although mere continuance of the result of a crime does not continue the crime itself, continued cooperation in the crime may clearly occur without a continuous series of acts by all the conspirators. *United States* v. *Kissel*, 218 U. S. 601, 608. On the first occasion Benevedes disclosed what had been done for Marie financially. This was intended to keep Basom quiet at least until he could get to petitioner's office and to petitioner's persuasions, and it accomplished that purpose. On the second occasion, Benevedes' seemingly rambling discourse was clearly an exploration of ways and means to meet the new threat and as clearly an emphasis, by review of Steffen's past rages and murderous propensities and by references to petitioner's cleverness, of what would happen to Marie and Basom if they went to the federal authorities (*supra*, pp. 13–16). It is not relevant to the question that Basom, in the last conversation, was now working with the Government; what is material is that Benevedes was acting in furtherance of the conspiracy by the same playing on cupidity and fear that had been successful up to that time. The recital of petitioner's past participation was, in this setting, not gratuitous; the disclosure to Basom, who

had been away, of what had happened was a necessary means of accomplishing the object of the conspiracy, the continuous suppression of the truth. It was therefore proper to admit the evidence and to charge the jury that they could consider it if they found the conspiracy was still in existence.

2. Petitioner's objection (Pet. 67–75) to the evidence of arrangements, via notes and mortgages by Steffen, for law business in the amount of $25,000 for petitioner's partner and associate (summarized *supra,* pp. 17–19) is completely without merit. The evidence constituted a relevant explanation of a motive for petitioner's undertaking of the grave risks intrinsic in the conspiracy. There was no arbitrary imputation of guilt involved, but simply a proper submission of the facts concerning the partnership and association to the jury.

CONCLUSION

The decision below is correct and no conflict of decisions or question of importance is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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